

LEGAL ALERT

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Mandatory Use of Letter of Credit (L/C) for Export of Certain Goods

On 7 September 2018, the Minister of Trade (MOT) issued Regulation of the MOT No. 94 of 2018 (Reg. 94). Despite superseding three MOT regulations issued in 2015 that previously regulated the same main provisions, this Reg. 94 still requires a L/C as a mandatory payment instrument for export of 13 types of minerals, 7 types of coal, petroleum and natural gas, Crude Palm Oil (CPO) and Crude Palm Kernel Oil (CPKO). This Reg. 94 took effect on 7 October 2018.

Highlights of the New Provisions

1. Reg. 94 provides a new list of commodities (Specified Commodities) that, if exported, the export payment must be done by using L/C. The changes are mainly made to minerals, and petroleum and natural gas sectors. If the Specified Commodities are used and exported for samples, scientific research and development, and promotion on overseas exhibitions, the use of L/C as a payment instrument is not mandatory. An approval from the Director of Export and Import Facilitation of the Ministry of Trade must be obtained by exporters by submitting a written application in order to be exempted.
2. Reg. 94 requires that the lowest price of the Specified Commodities stated in the L/C must be in accordance to the applicable world market. In the absence of a world market price, Reg. 94 provides an alternative way to determine the lowest price of the Specified Commodities by using the lowest price of the relevant Specified Commodities as determined by the government of the export destination country or set based on the prices applicable in the said country.
3. Surveyors conducting technical verification on exported palm oil commodities are no longer determined by the MOT, but the President Director of Badan Pengelola Dana Perkebunan Kelapa Sawit. For verification on other commodities, the surveyor will remain determined by the MOT.
4. By no later than the 15th day of the following month, exporters must file a monthly report of its exported Specified Commodities stating the final price of the L/C to the Director General of International Trade of the Ministry of Trade (DGIT). A maximum of two warning letters will be sent to the exporter in the event of failure to comply with this reporting requirement. If no remedy is provided after the issuance of the warning letters, suspension of export and/or business licenses may be imposed.
5. The implementation of L/C payment method provisions is monitored by the Minister of Finance, the Governor of Indonesian Central Bank, and the relevant ministers, and heads of institutions either severally or in certain cases jointly as coordinated by the MOT although such certain cases are not specified in Reg. 94. However, DGIT is no longer obliged to file a monthly report of export realisation for the Specified Commodities to the MOT.

Repeated Provisions

1. [Acceptance of L/C payment method](#)

The L/C must be accepted through a domestic Foreign Exchange Bank or an export financing institution established by the Government with due observation to the provisions of Bank Indonesia Regulations concerning Foreign Exchange Generated from Exports.

2. Exporter's specific obligations when exporting Specified Commodities and the sanctions

In addition to the mandatory monthly reporting, exporters are obliged to:

- a. state the use of L/C for payment for the export of Specified Commodities in the Notification of Export Goods to Customs; and
- b. submit a statement letter to the surveyor, containing data and/or information on the proposed export of the Specified Commodities for a technical verification process.

If the exporter fails to comply with the obligations above and the obligation to use L/C as the payment instrument, the export of the Specified Commodities will not be permitted.

Sanctions can be in the form of warning letters and suspension up to revocation of export and/or business licenses.

3. Mandatory technical verification of export by surveyor

Export of the Specified Commodities must go through technical verification process by the surveyor who in turn will confirm that L/C is the payment instrument for the relevant export before the survey report is issued.

4. Postponement of the use of L/C

For contracts entered into prior to the enactment of Reg. 94 which require payment instruments other than L/C, the use of L/C can be postponed based on an approval of the MOT after receiving recommendation from the relevant minister.

Notes for stakeholders

1. On 28 September 2018 the MOT issued regulation No. 102 of 2018 removing commodities in petroleum and natural gas sector from the Specified Commodities. This regulation also took effect on 7 October 2018.
2. Sellers and buyers should review payment terms under their contracts and agree any necessary amendments to ensure exports are in compliance with the regulation.

If you have any questions or require any additional information, you may contact [Barry Rolandi](#), [Achimi Athia](#) or the ZICO Law partner you usually deal with.

This alert is for general information only and is not a substitute for legal advice.